

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JOSHUA ANTHONY CHONG,  
VINCENT JOHN FAROZIC, RICHARD MARTIN JACOBSON,  
BRET ALAN SNYDER, RANDALL WAYNE STEPHENS  
and DAVID WAYNE MOSLEY

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Appeal No. 2005-0075  
Application No. 09/951,049

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ON BRIEF

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Before KIMLIN, PAK and PAWLIKOWSKI, Administrative Patent Judges.  
KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-6, 8, 9 and 11. Claim 10 has been allowed by the examiner whereas claim 7 stands objected to as being dependent upon a rejected claim. A copy of illustrative claim 1 is appended to this decision.

Appeal No. 2005-0075  
Application No. 09/951,049

The examiner relies upon the following reference in the rejection of the appealed claims:

Daly et al. (Daly)	6,017,849	Jan. 25, 2000
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Appellants' claimed invention is directed to a method of preparing encapsulated cyclopropenes. The method entails, inter alia, contacting the product cyclopropene gas with a solution of an encapsulation agent, such as cyclodextrin.

Appealed claims 1-6, 8, 9 and 11 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Daly.

Appellants submit at page 3 of the Brief that "[c]laims 1-6, 8, 9, and 11 stand or fall together." Accordingly, all the appealed claims stand or fall together with claim 1.

We have thoroughly reviewed each of appellants' arguments for patentability. However, we are in complete agreement with the examiner that the claimed subject matter is described by Daly within the meaning of § 102. Accordingly, we will sustain the examiner's rejection for essentially those reasons expressed in the Answer, and we add the following primarily for emphasis.

Appellants do not dispute the examiner's factual finding that Daly, like appellants, discloses a method of preparing encapsulated cyclopropenes comprising the steps of contacting a

first stream of the recited allyl compound with a second stream comprising the recited base to cause evolution of the cyclopropene, passing the cyclopropene gas through a condenser, and contacting the cyclopropene gas with an encapsulation agent in a second vessel to give a precipitate of the encapsulated cyclopropene. The sole argument advanced by appellants is that "Daly provides the encapsulation agent in the form of a slurry in water or as dry material whereas Applicants' process requires a solution of the encapsulation agent in water" (page 3 of Brief, last paragraph, emphasis added). Appellants contend that, although Daly describes a solution of the encapsulation agent, cyclodextrin, the amounts of cyclodextrin used by Daly is more than can be dissolved in solution in the amount of water disclosed. Appellants explain that since the cyclodextrin "used by Daly has a water solubility of 14.2 grams per 100ml . . . , 0.575 liters of the buffer solution could contain a maximum of 81.65 grams of dissolved cyclodextrin, not the 900 grams that Daly teaches" (page 4 of Brief, second paragraph).

The flaw in appellants' argument is that Daly describes, as acknowledged by appellants, at least a maximum of 81.65 grams of cyclodextrin in solution. Manifestly, even though the

Appeal No. 2005-0075  
Application No. 09/951,049

amounts of cyclodextrin and water disclosed by Daly may result in some of the cyclodextrin in solution and some in an undissolved slurry, the fact remains that Daly describes the method steps presently claimed, namely, "contacting the cyclopropene gas with a solution of the encapsulation agent" (claim 1, c)). Since claim 1 on appeal does not preclude the presence of dispersed encapsulation agent along with dissolved encapsulation agent, appellants' argument is not germane to the claimed subject matter on appeal. While appellants maintain that they "have discovered that it is critical that all of the cyclodextrin be in solution when contacted with the cyclopropene" (page 6 of Brief, first sentence), the appealed claims do not recite a limitation that all of the cyclodextrin be in solution.

In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is affirmed.

Appeal No. 2005-0075  
Application No. 09/951,049

No time period for taking any subsequent action in  
connection with this appeal may be extended under 37 CFR  
§ 1.136(a).

AFFIRMED

EDWARD C. KIMLIN	)	
Administrative Patent Judge	)	
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	)	
	)	
CHUNG K. PAK	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
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	)	
	)	
BEVERLY PAWLIKOWSKI	)	
Administrative Patent Judge	)	

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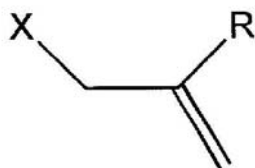
Appeal No. 2005-0075  
Application No. 09/951,049

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APPENDIX

1. A method to prepare encapsulated cyclopropenes, comprising the steps of:

a) contacting a first stream comprising an allyl compound of the formula:



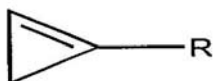
wherein:

X is a leaving group; and

R is hydrogen or a substituted or unsubstituted alkyl, alkenyl, alkynyl, cycloalkyl, cycloalkylalkyl, phenyl, or naphthyl group; wherein the substituents are independently halogen, alkoxy, or substituted or unsubstituted phenoxy;

with a second stream comprising a base comprising a non-nucleophilic strong base, optionally comprising a weaker base

and an inert solvent, in a first vessel, causing evolution  
of a cyclopropene of the formula:



as a gas;

- b) passing the cyclopropene gas through a condenser held at a temperature less than the boiling point of the allyl compound and greater than the boiling point of the cyclopropene;
- c) contacting the cyclopropene gas with a solution of the encapsulation agent in a second vessel to give a precipitate of the encapsulated cyclopropene;
- d) separating the precipitate from the solution,
- e) optionally washing the precipitate; and
- f) drying the precipitate.